



Cutting through the Legalize:

Demystifying the Administrative Forum

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Disclaimer

- I am not providing legal advice
- This training is for educational purposes only
- For further guidance on these legal issues, please consult an attorney
- This training does not represent the policies of the Indiana Civil Rights Commission

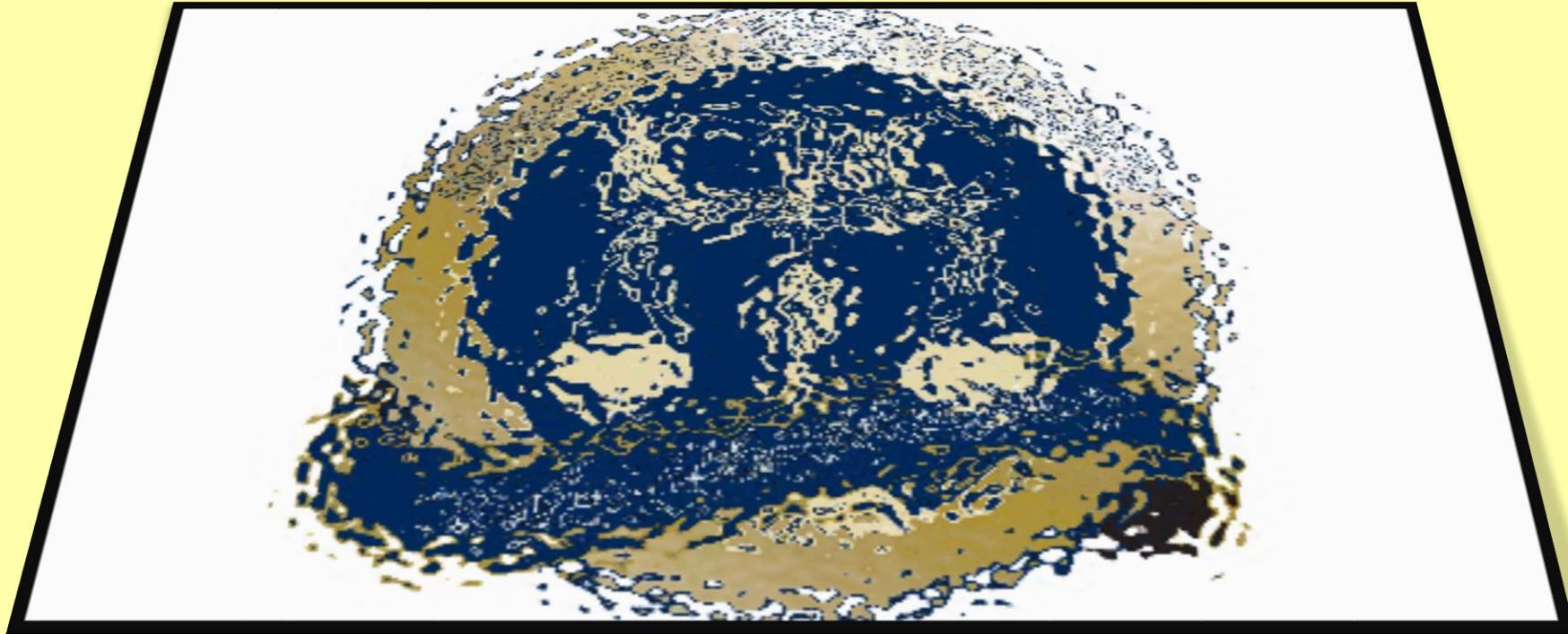
Training Goal?

To give attendees the confidence you need to advocate for your **fair housing case** before the Indiana Civil Rights Commission in any stage of the proceeding in the administrative forum.



Agency Overview

Not so long ago, in a state not so far away....



Statutory Mission: IC 22-9-1-2



Part One: IC 22-9-1-2(a)

- “provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing...”
- “to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin, or ancestry, since such segregation is an impediment to equal opportunity...”
- “declared to be civil rights...”



Part Two: IC 22-9-1-2(c)

“It is also the public policy of this state to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, and lending institutions from unfounded charges of discrimination.”



In Sum...

The Indiana Civil Rights Commission's mission is the **neutral** investigation of complaints with the goal of **eliminating discrimination** based on protected classes in protected areas through the **litigation of founded claims** of discrimination.



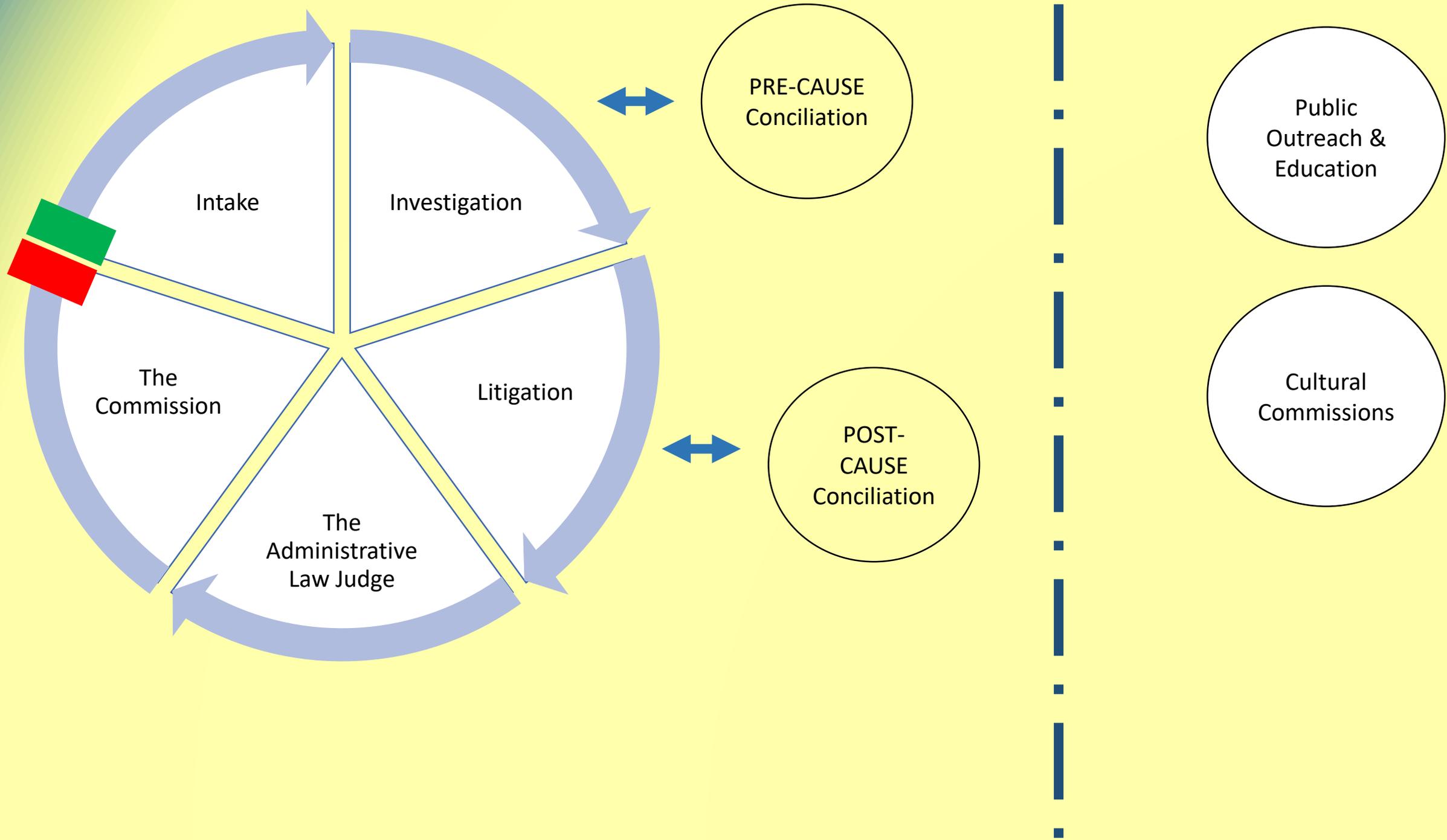
1. Complaint Filed
2. Investigation
 - a. Answer Filed
 - b. Interviews
 - c. Document Requests
3. Finding
4. Investigative Appeal
5. Litigation
6. Initial Order
7. Objections
8. Final Order
9. Judicial Appeal and Review

Case Events and Timeline



Departments





The Law



YOU HAVE

NO POWER HERE

IDE-THE-BOX?



WE HAVE

NO

AUTHORITY

OUTSIDE OF

THE LAW

You have no power over me.

State Authority

- State Law
 - Indiana Civil Rights Act
 - Indiana Code 22-9-1-4 creates the Commission
 - Indiana Code 22-9-1-6 outlines the Commission's powers
 - Indiana Fair Housing Act
 - Indiana Code 22-9.5-4-1 authorizes the Commission to administer the Indiana Fair Housing Act
 - Indiana Code 22-9.5-4-3 states Commission's powers

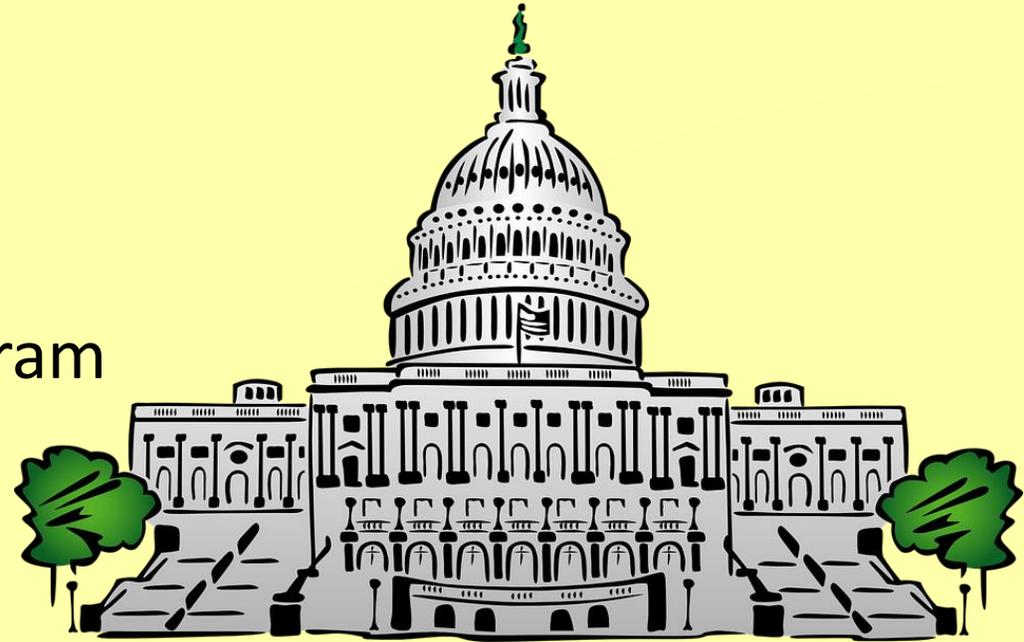


Federal Authority

- Federal Law-Fair Housing Assistance Program (FHAP)

24 CFR Part 115, Subpart C

- “The intent of this funding program is to build a coordinated intergovernmental enforcement effort to further fair housing and to encourage the agencies to assume a greater share of the responsibility for the administration and enforcement of fair housing laws.”
- State Agencies enforce their SUBSTANTIALLY SIMILAR laws
- Department of Housing and Urban Development provides training and resources



Indiana Administrative Code

- The Indiana Administrative Code governs the procedures of practice before the Indiana Civil Rights Commission:
 - 910 IAC 1: Practice and Procedure Before the Commission
 - 910 IAC 2: Fair Housing Complaints
 - 910 IAC 3: Entitled Employment Discrimination Against Disabled Persons
- Note: BOTH 910 IAC 1 and 910 IAC 2 apply to Fair Housing Complaints

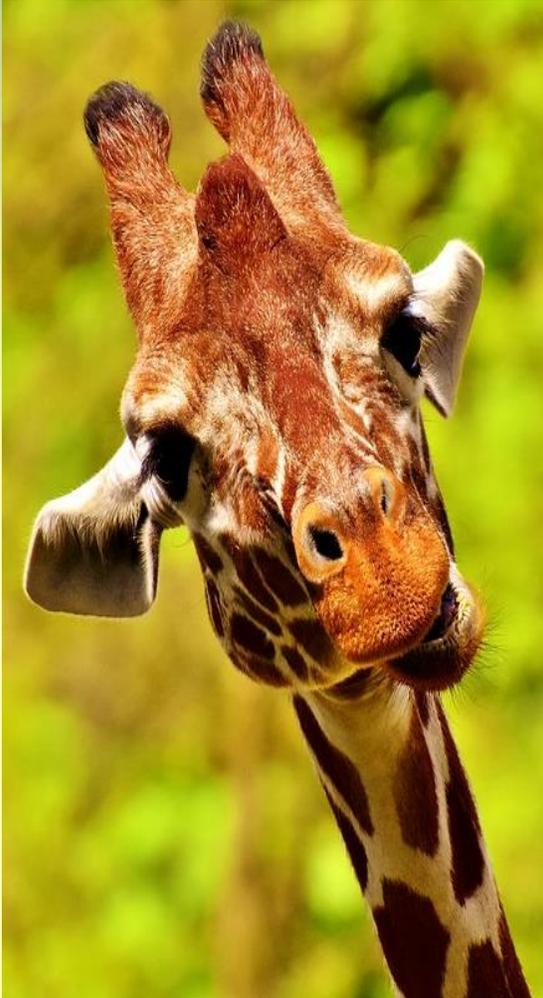
Pitfall of Administrative Forum: Know the Jurisdiction of the ICRC



Governing Laws: Relational



Governing Laws: Relational



- Parents: Indiana Civil Rights Law and Indiana Fair Housing Act

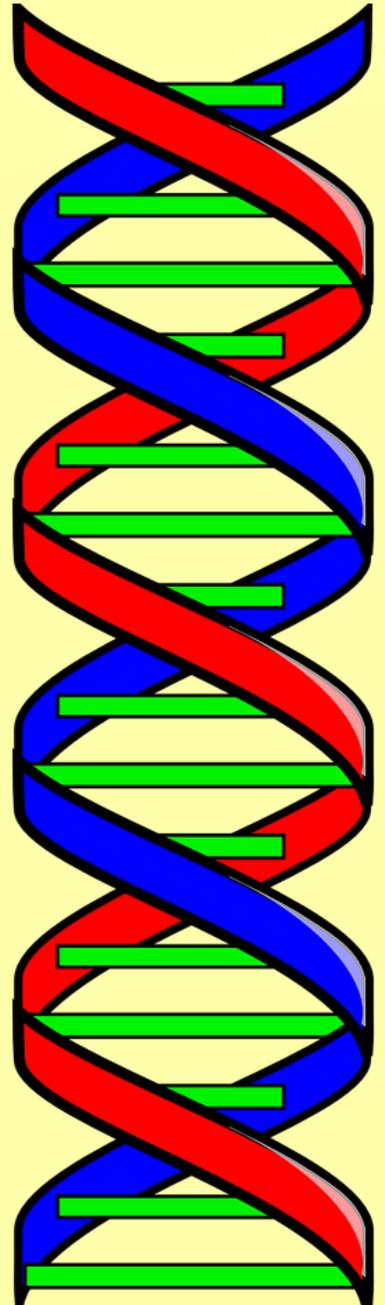
The “parents” provide the “genetic source code” for the “siblings.” The “parents” have a relationship, but they are not the same.

- Siblings: 910 IAC 1 and 910 AIC 2

The “siblings” mirror their “parents” in many respects but they are not the same as the “parents.” The “siblings” have a relationship, but they are not the same either.

Governing Laws: Relational

- DNA: Procedure: The Indiana Fair Housing Act, Indiana Civil Rights Law, 910 IAC 1, and 910 IAC 2 all share a **procedural “DNA”** that builds and borrows from each other
 - #1: Indiana Civil Rights Law
 - #2: Indiana Fair Housing Act
 - #3: 910 IAC 1
 - #4: 910 IAC 2
- Phenotype/Expression: Each law is its own unique **substantive law** that does not affect each other



Examples: Indiana Code

- Indiana Civil Rights Law covers housing and real estate. It makes no exceptions for certain types of property. The Indiana Fair Housing Act makes several exceptions for certain types of property.
 - Can you file a complaint under the ICRL?
 - Can you file a complaint under the IFHA?
- The Indiana Civil Rights Law allows the ICRC to appoint an ALJ. The Indiana Fair Housing Act does not mention the power to appoint an ALJ. Can an ALJ decide a complaint under the Indiana Fair Housing Act?
- The Indiana Fair Housing Act protects familial status. The Indiana Civil Rights Law does not.
 - Can you file a complaint under the ICRL?
 - Can you file a complaint under the IFHA?

Examples: Indiana Administrative Code

- Right to appeal is clearly articulated in: 910 IAC 1
 - 910 IAC 1-3-2(g): “A party who is aggrieved by a finding of the director or the deputy director, other than a finding of probable cause, may file, within fifteen (15) days after receipt of notice of such finding, a written appeal of such finding with the commission....”
- Right to appeal is not mentioned in: 910 IAC 2

Does the right to appeal a no cause finding exist in Fair Housing complaints?

- 910 IAC 1: Answer to a complaint is filed 20 days after receipt of the complaint (910 IAC 1-2-7(c))
- 910 IAC 2: Answer to a complaint is filed 10 days after receipt of the complaint (910 IAC 2-6-2(j)(1))

When is a Fair Housing Complaint Answer Due?

Recent Decision

ICRC (Shannon) v. Pedcor Properties: Commission considered the relationship between the two laws and determined that the laws are **procedurally interrelated**, confirming past practice. The case involved a familial status claim, which illustrated a distinction between the two laws substantively.

Representing Your Case in the Complaint Process

Getting to Cause or No Cause

Number One Mistake?

- Indiana Fair Housing Act
- Indiana Civil Rights Act
- Indiana Administrative Code
 - Article 1: Practice and Procedure before the Commission
 - Article 2: Fair Housing Complaints

Know what laws apply!



Investigation at the Indiana Civil Rights Commission 910 IAC 2-6-4

1. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.
2. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.
3. To develop factual data necessary for the director to make a determination under section 6(a) of this rule whether reasonable cause exists to believe that a discriminatory housing practice has occurred, or is about to occur, and to take other actions provided under this section.

910 IAC 2-6-4: Three Statutory Goals

Law

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

Expectation

- Response from Respondent
- Interviews of Relevant Parties
- Supporting Documents



910 IAC 2-6-4: Three Statutory Goals

Law

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

Expectations

- Access to Policies
- Accounting of Practices



910 IAC 2-6-4: Three Statutory Goals

Law

(3) To develop factual data necessary for the director to make a determination [as to] whether reasonable cause exists to believe that a discriminatory housing practice has occurred, or is about to occur, and to take other actions provided under this section.

Expectations

- Respondent's full defense
- Complainant's full allegations



Common Pitfalls



Complainant

- No rebuttal interview
- Not staying in contact
- Not drawing a clear nexus between protected class and act

Respondent

- Not fully rebutting Complainant's claims
- Not providing requested documents
- Not supporting claims with allegations
- Not willing to discuss or disclose comparator evidence

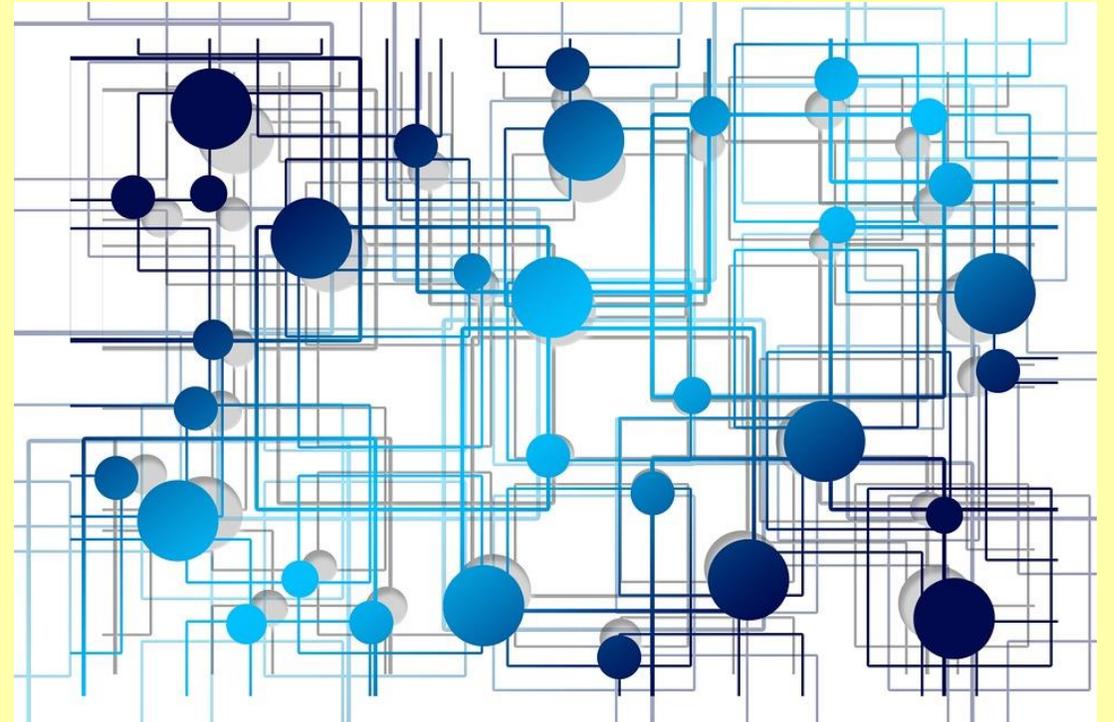
Filing a Complaint

- Call, walk-in, or online
- Must be signed!
- Statute of limitations:
 - Fair Housing Act (IC 22-9.5-6-1)-
One year
 - Indiana Civil Rights Act
(IC 22-9-1-3(p)(5))-
180 Days



Common Pitfalls

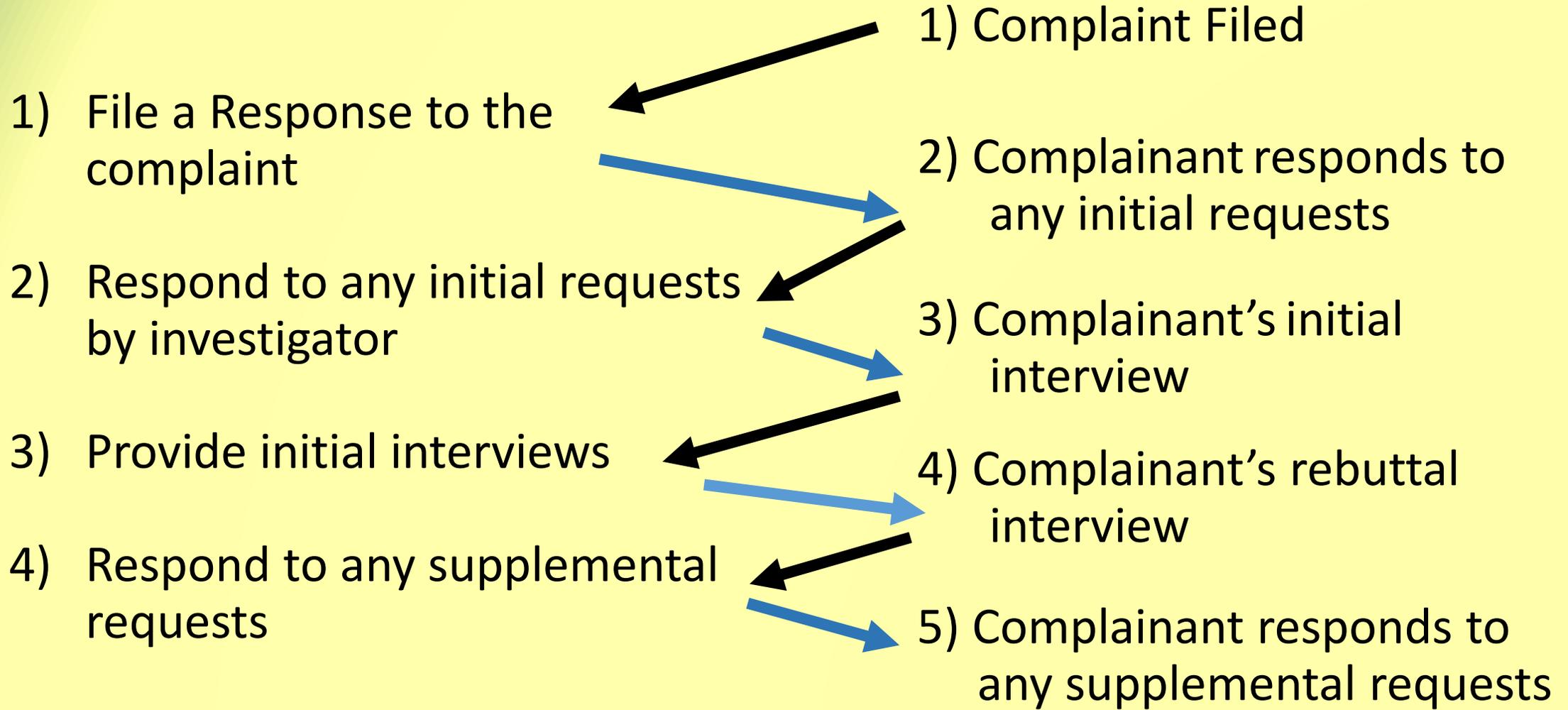
- Complaints must be signed and returned
- Complaints must state ALL allegations
- Complaints must draw a clear nexus between the protected class and the act



Tips for Advocates

- Advocates can file a complaint separately if a Fair Housing Organization
- Follow the prima facie cases when providing the short description of events for the complaint form: <http://www.fairhousingnc.org/wp-content/uploads/2015/08/HUD-Memo-Elements-of-Proof-2014.pdf>
- Be sure that the complaint filed reflects ALL protected areas and ALL protected classes that could apply
- Name ALL necessary or implicated Respondents
- Prompt Adjudication

Defending a Complaint Timeline



Response

- Identify the legal issues
- Respond to each legal issue
- Focus on Indiana law, with awareness of federal law
- Support your legal argument with documents



Tips for Advocates

- Counter each protected area and protected class mentioned on the face of the complaint form, even if not directly mentioned in the allegations paragraph
- State law is different than federal law. Be sure you know the difference and articulate it in your response
- Be forthcoming with documents.
- Assert ALL available defenses
- Motion for a More Definite Statement

Document Requests and Interviews

- Timely respond to any request or request an extension when necessary
- Not providing documents can undermine your claims



Keep in mind:

- Investigation is not the same as litigation
- Investigator is neutral
- Investigator is not an attorney or the opposing party
- Helping the investigator understand the facts helps you defend your case

Pre-Cause Conciliation

- Pre-Cause:

- Attempt to mediate and resolve the complaint **before** the Indiana Civil Rights Commission makes a finding.
- Mediation between the aggrieved party who filed the complaint and the respondent

- Post-Cause

- Attempt to mediate and resolve the complaint **after** the Indiana Civil Rights Commission makes a finding.
- Mediation between the aggrieved party, the Indiana Civil Rights Commission, and the respondent

Pre-Cause Conciliation

- Indiana Civil Rights Commission's mediators
- Free service
- Resolves complaint prior to finding
- State does not yet have an interest in the case



Tips for Advocates: Post Investigation

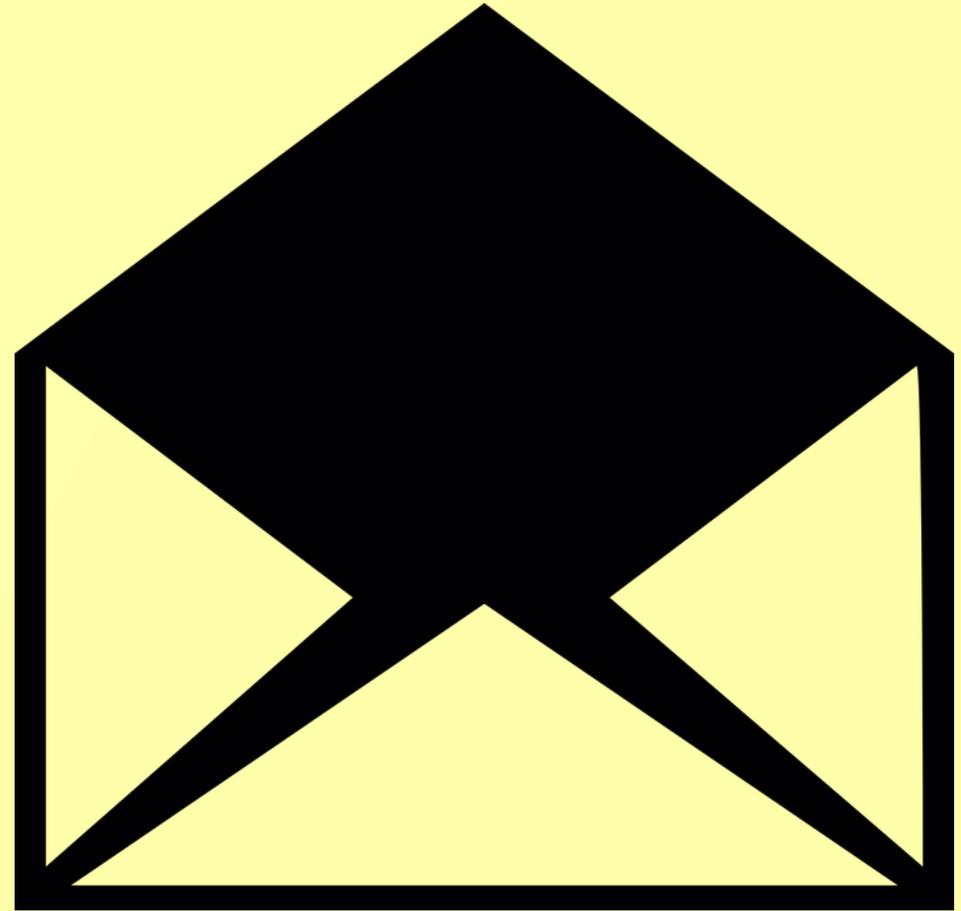
- Know that it may take time before the finding is issued.
- Know that after the investigation is complete, any party may request a copy of the Final Investigative Report and related documents
- Parties can always mediate



The Indiana Civil Rights Commission's finding

Notice of Finding-What to Notice

- Which laws are at issue
- What kind of “cause” was found or not found
- The specific legal allegation
- The specific facts that the investigator found
- Legal rights and obligations



Notice of Finding

What it is...

- A representation of the claims the Indiana Civil Rights Commission will litigate
- A general notice concerning rights and obligations
- A complaint for purposes of the Administrative Forum

What it is not...

- Legal advice
- A complete overview of all facts found by the investigator
- A legal writing compiled by the attorney on the case
- An offer letter

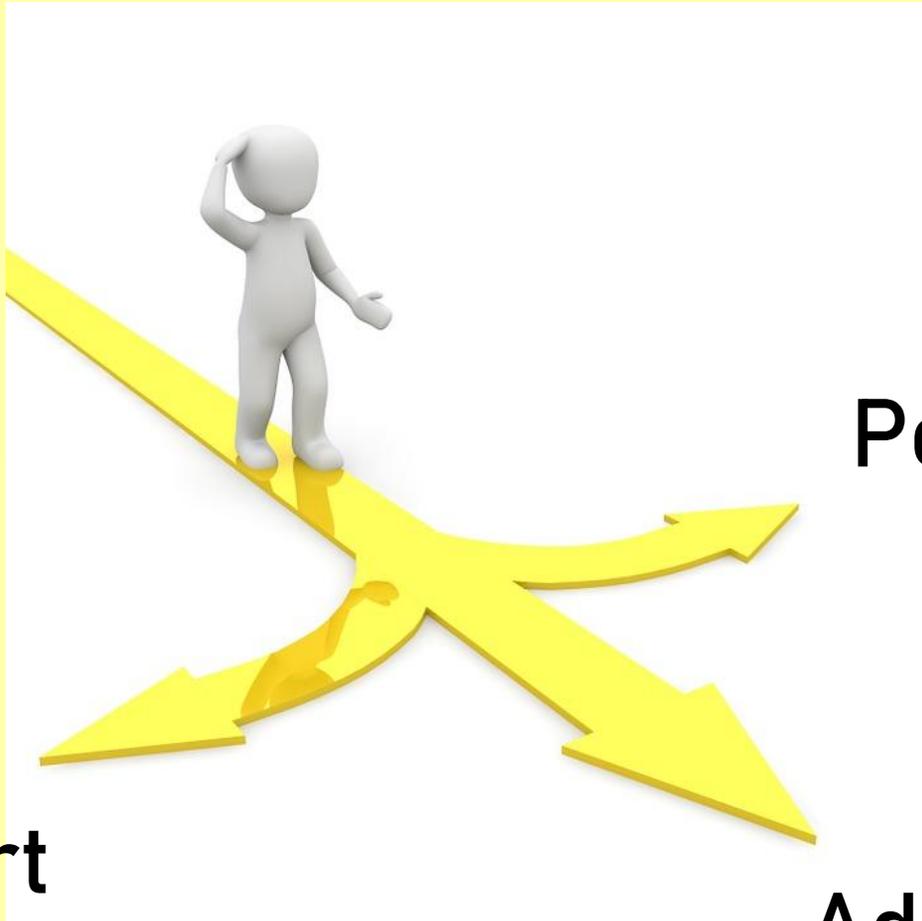
Appeals of No Cause Findings

- Available to complaints under ICRL and IFHA
- Must be made within 15 days of receipt of the Notice of Finding
- Can include additional evidence (recommended)
- The Commission will assign the complaint to an individual Commissioner to review.
- The Commission can deny the appeal, grant the appeal, or remand the complaint.
- If the Commission grants the appeal, the Commission will issue a Notice of Intent to Reverse.
- Respondent will be allowed the opportunity to respond to the reversal within 15 days.
- The Commissioner will review any response made and issue a final decision.

NOTE: Commission meetings are open to the public and agendas are posted in advance of each meeting.

Choice of Forum

“Two roads diverged in a yellow wood...”



Post-Cause Conciliation

State Court

Administrative Forum

Administrative Forum

- Case proceeds before an ALJ → NO JURY
- A decision will not be issued on the same day as the hearing
- Less formal than state court or federal court
- No filing fees
- ALJ travels to the parties
- Motion practice still occurs
- Two Decision Makers: ALJ and Commission

Timeline

State Court

- In 2013, the average length of a court case based in a tort action was 16 months (national)
- In 2013, 75% of cases were closed after one year (national)

Statistics: Civil Justice Initiative, Landscape of Civil Litigation in State Courts, 2015

Administrative Forum

- Statute requires a hearing to be held at or near 120 days from the Notice of Finding
- Note: each case is unique and can present challenges that extend that estimate

910 IAC 2-7-1

Procedure

State Court

- Indiana Trial Rules apply
- Indiana Rules of Evidence Apply

Administrative Forum

- Indiana Administrative Procedure Applies
- Indiana Administrative Orders and Procedures Act Applies

Strict Rules of Procedure

More Relaxed Rules of Procedure

Example: Hearsay

Case Structure

State Court

- Jury Trial or Bench Trial
- File a Complaint to commence case

Administrative Forum

- Indiana Civil Rights Commission's Administrative Law Judge
- Notice of Finding opens the case

Remedies

State Court

- actual damages
- punitive damages
- attorney's fees
- court costs
- affirmative relief
- Injunctions and restraining orders

Administrative Law Judge

- “restore” losses
- Actual damages (including Emotional Distress)
- Civil penalties
- Attorney's fees
- Court costs
- Injunctive and equitable relief
- Notification of other state agencies

Remedies

State Court

- punitive damages:
proportionality

Fair Hous. Ctr. of Cent. Indiana, Inc. v. Smitley,
No. 1:16-CV-880-WTL-DML, 2018 WL 3237860,
at *2 (S.D. Ind. July 3, 2018)

- Actual Damages: \$25,000.00
- Punitive Damages: \$50,000.00

Administrative Law Judge

- civil penalties: 1st offense is
capped at \$10,000.00

ICRC (Meyer) v. Zender,

- Actual Damages: \$1,710.00
- Emotional Distress: \$13,290.00
- Civil Penalty: \$5,000.00

Motions Practice

State Court

- Motions: allowed
- Discovery: Indiana Trial Rules
- Mediation can be ordered

Administrative Forum

- Motions: allowed
- Discovery: Indiana Trial Rules imported through IAC (limited generally to 90 days)
- Mediation can be ordered
- Pre-hearing briefing of legal issues allowed

Forum Chosen...Now What?

READ THE NOTICE OF FINDING

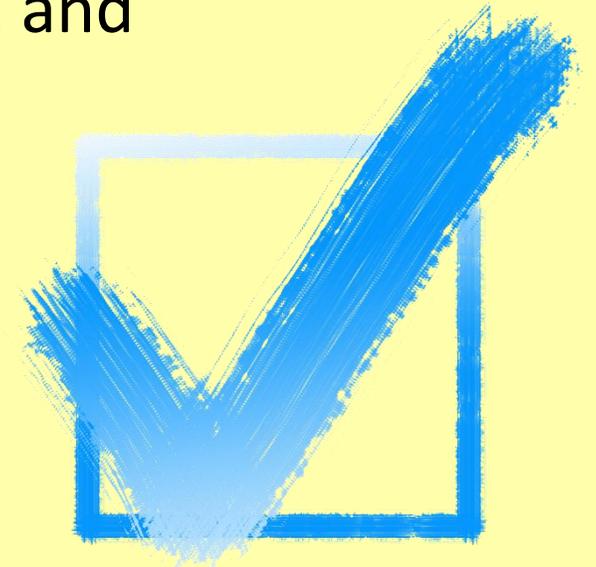
1. Probable Cause
2. Reasonable Cause
3. Probable and Reasonable Cause

THE PROCEEDURE IS DIFFERENT IN EACH INSTANCE!

Reasonable Cause

Notice of Election: IC 22-9.5-6-12

- Must be made within 20 calendar days after receiving Notice of Finding (if Complainant, 20 days after signature)
- Must send in actual, written notice to the Administrative Law Judge
- Administrative Code requires service on Docket Clerk, Director of the Indiana Civil Rights Commission, Relevant Attorneys, and Respondent/Aggrieved Party



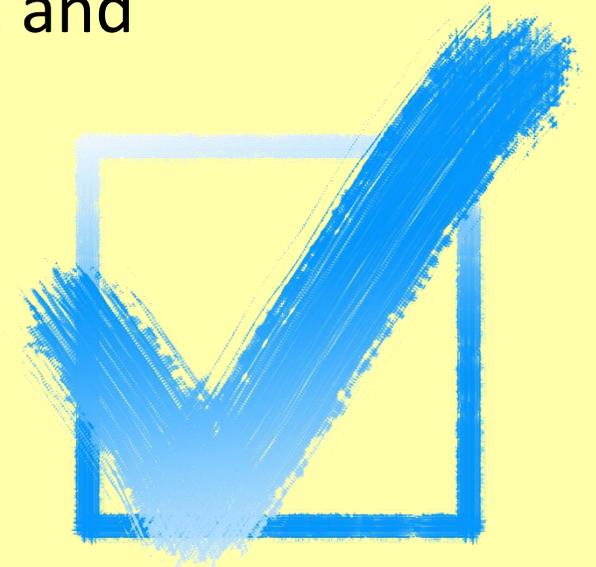
Pitfall of Administrative Forum: Service
required on ALL parties EVERY time



Probable Cause

Notice of Election: IC 22-9-1-16

- Must be made anytime before hearing
- Must send in actual, written notice to the Administrative Law Judge on a form provided by ICRC
- Administrative Code requires service on Docket Clerk, Director of the Indiana Civil Rights Commission, Relevant Attorneys, and Respondent/Aggrieved Party
- **All parties** must elect to be valid



Reasonable and Probable Cause Notice of Election

- BOTH procedural requirements must be met to remove the entire case.
- If only one party elects, the probable cause case stays in the administrative forum
- Probable Cause election does not need to be done at the same time as the Reasonable Cause election
- **Read carefully before electing to go to state court. If the other party does not agree, you may be litigating in two forums.**



Administrative Hearing

Keep in Mind...

- The Director of the Indiana Civil Rights Commission is the named Complainant, NOT the aggrieved party who filed the complaint
- Read the Administrative Code (Title 910, Article 1 and 2)
- Read the Administrative Orders and Procedures Act
- State has an interest in the case

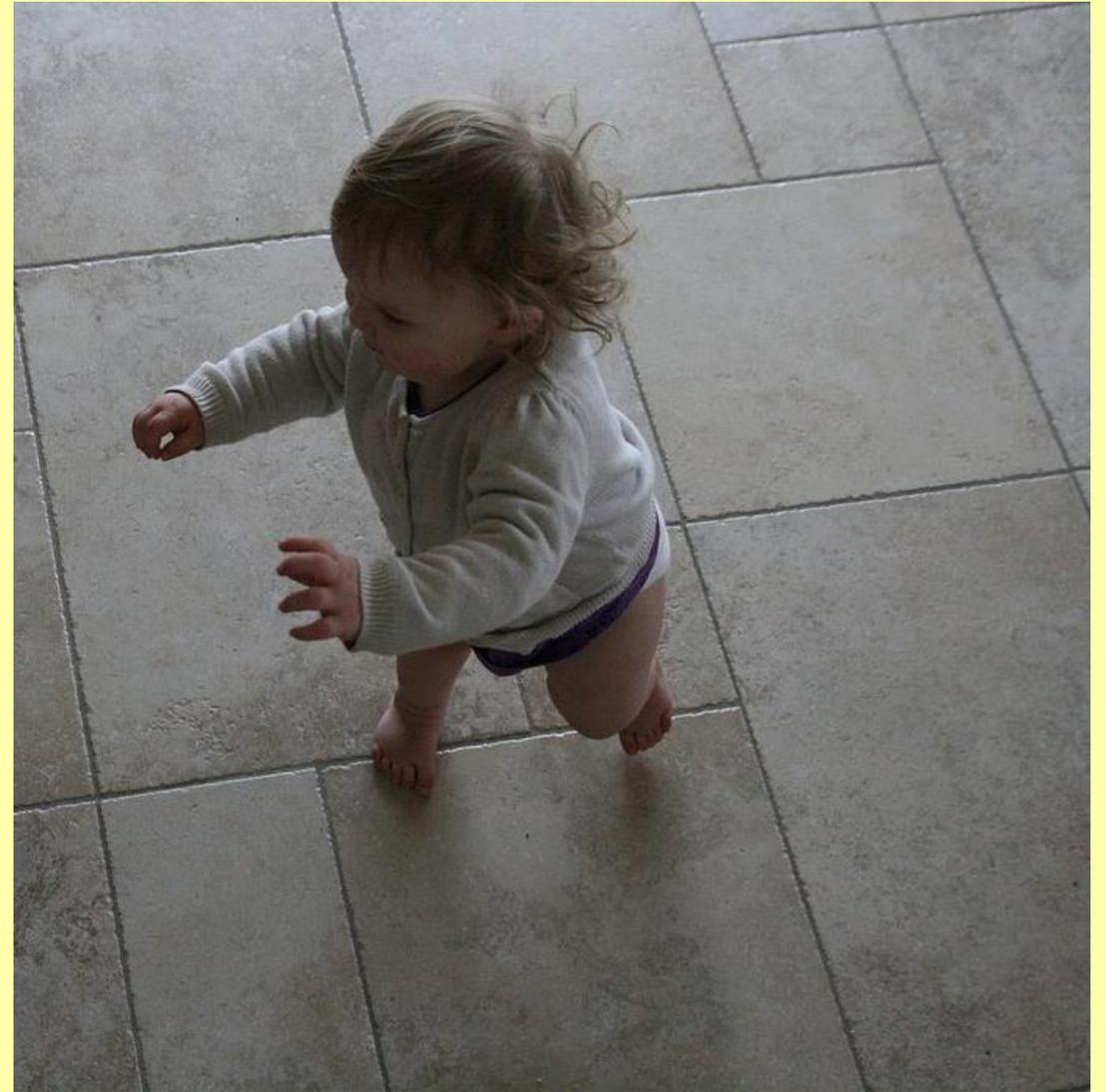


Pitfall of Administrative Forum: Know the Parties



First Steps

- Notice of Finding
- Choice of Forum
- Contact Indiana Civil Rights Commission's Attorney
 - Aggrieved Party-representation
 - Respondent-clarify position
- File an appearance
- Respondent Files Response



Pitfall of Administrative Forum: File an Answer



Respondent's Answer

- Yes, you filed an answer in the investigation stage.....
- Yes, **you still need to file an answer in the adjudication stage!**
- “Within the thirty (30) days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgment as a matter of law shall file an answer to the charge...” 910 IAC 2-7-4(f)
- **“Any allegation that is not denied shall be deemed to be admitted.”**

Initial Prehearing Conference

- First procedure before the Administrative Law Judge
- Telephonic
- Still occurs if an election is made
- Failure to attend can result in a default order
- Sets case deadlines



Initial Prehearing Conference Topics

- Settlement possibilities
- Alternative dispute resolution resources
- Law and fact not in dispute
- Joinder and consolidation
- Subject matter jurisdiction
- Motions
- Amendments
- Relief sought by complainant
- Actions in other forums
- Case deadlines and case management
- Other matters that could affect the case timeline

Case Management

**Every case is different

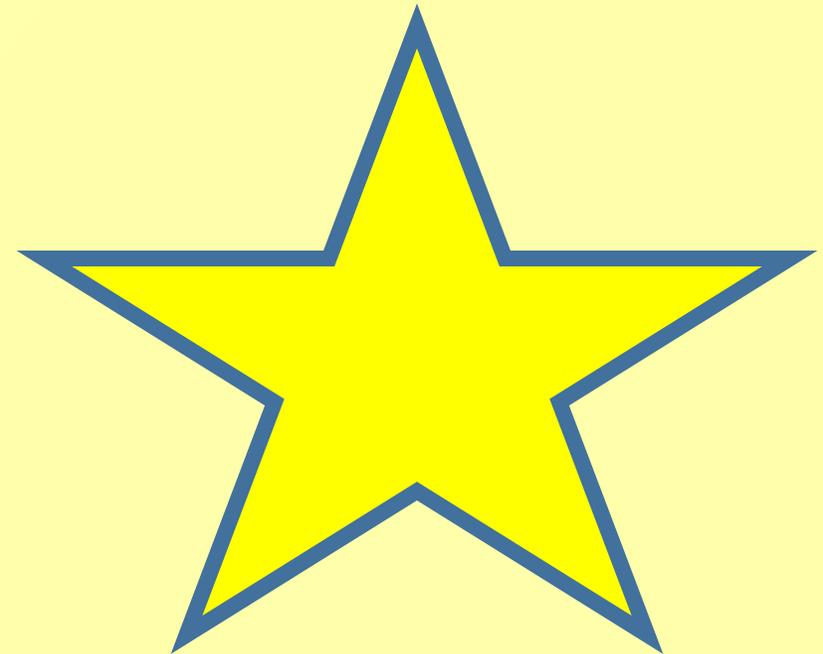
- Discovery is generally 90 days
- Dispositive Motions generally 120 days
 - 30 days Response
 - 15 days for Reply
 - 15 days Surreply
- Hearing date set in alternative to Dispositive Motion
- Mediation can be ordered, and it will change these deadlines

Important Choices

- Is mediation likely? How would the parties like to dispose of the case?
 - If a hearing date is set, then parties must file joint stipulation of dismissal to be approved by the majority of the Commission.
 - If hearing date is not set, then Complainant can file a motion to withdraw.
 - If mediation is ordered, then discovery deadlines are stayed. Discovery cannot be conducted prior to the completion of the ordered mediation.
- Do the parties plan to file any dispositive motions?
 - Dispositive motions can change the timeline radically when filed.

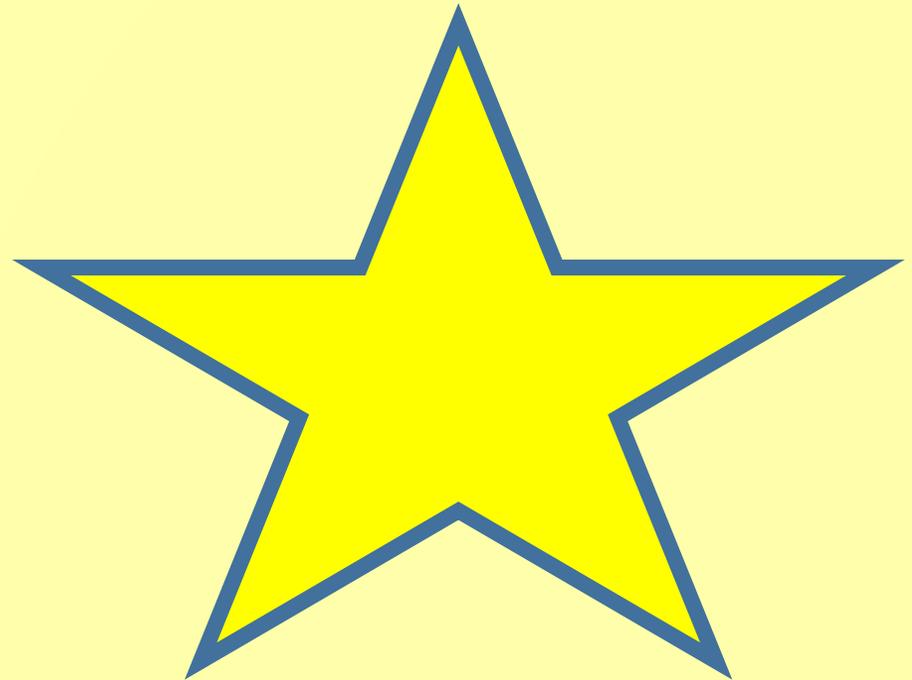
Benefit of the Administrative Forum: Intervention

- The aggrieved party may intervene in the action individually



Benefit of the Administrative Forum: Briefing Legal Issues

- The Indiana Administrative Orders and Procedures Act allows the parties to brief legal issues for the ALJ's decision before discovery.
 - Parties will have a better idea of the parameters of their case
 - More targeted and directed discovery
 - No unanswered questions
 - Facilitates mediation



Post-Cause Conciliation

- Parties: Director of the Indiana Civil Rights Commission, Aggrieved Party, and Respondent
- CAUTION: Any pre-cause conciliation attempts do not carry forward
- Free service with the Indiana Civil Rights Commission's mediators



The BIG difference? Affirmative Relief

- Advertising: Must include some statement of compliance with law regarding Fair Housing Logo
- Poster: Must include some statement of compliance with law regarding hanging fair housing posters
- Policy: Must include some statement of compliance with law in policies
- Training: Must include a commitment to Fair Housing Training

Common Issues

- Agreement cannot be confidential
- Agreement resolves complaints filed before the Indiana Civil Rights Commission, but not the Department of Housing and Urban Development



Discovery

- Same opportunities as in State Court under the Indiana Rules of Trial Procedure
- Typically 90 day period
- Sanctions?
 - Administrative Law Judge can issue a Motion to Compel
 - Party must enforce in State Court under the procedures contemplated in the AOPA
 - Default is possible



Motions Practice

- Generally the same as state court
- SERVE all parties
- Common motions: deadline extensions, joinder, default, motion to dismiss, motion for summary judgment, amendment of charge, withdrawal of complaint, intervention, ect.

Final Prehearing Conference: 910 IAC 1-9-1

10 days before Final Prehearing Conference: set attorney conference date

3 days before Final Prehearing Conference: Attorney Conference

Parties (or parties attorneys) required to meet before to exchange marked copies of exhibits that will be introduced at the hearing, any stipulations regarding the exhibits, stipulations as to facts, witnesses, and discuss settlement.



Final Prehearing Conference Topics

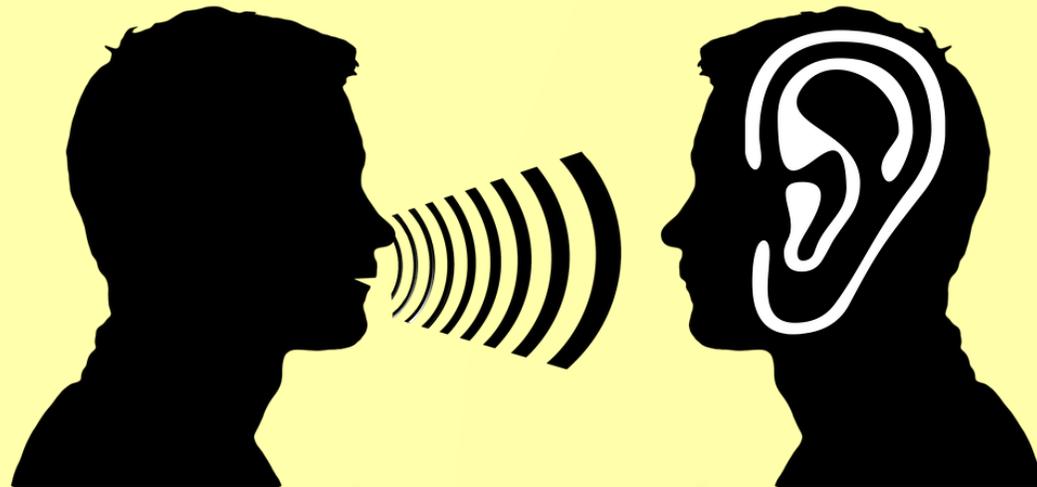
- The simplification of the issues.
- The necessity or desirability of amendments to the pleadings.
- The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof.
- A limitation of the number of expert witnesses.
- An exchange of names of witnesses to be called during the hearing and the general nature of their expected testimony.
- Such other matters as may aid in the disposition of the action.

Prehearing Statement

- ALJ can request that parties submit a prehearing statement of the case. ICRC provides a template to be used by the parties.
- Includes:
 - Names of parties
 - Facts in dispute
 - Witness list and summary of expected testimony
 - List of evidence
 - Statements of law and conclusions
 - Time for presentation of case
 - Other relevant information

Hearing

- Notice of hearing provided 15 days in advance of hearing
- Location: Indianapolis unless Administrative Law Judge orders otherwise
- Venue: Set by Administrative Law Judge
- Tone: less formal than State Court, but still a formal proceeding before a judicial officer



Hearings

- Each side presents case in chief
- Testimony and cross examination
- Presentation of evidence
- Pro se or represented
- ALJ can ask questions of parties

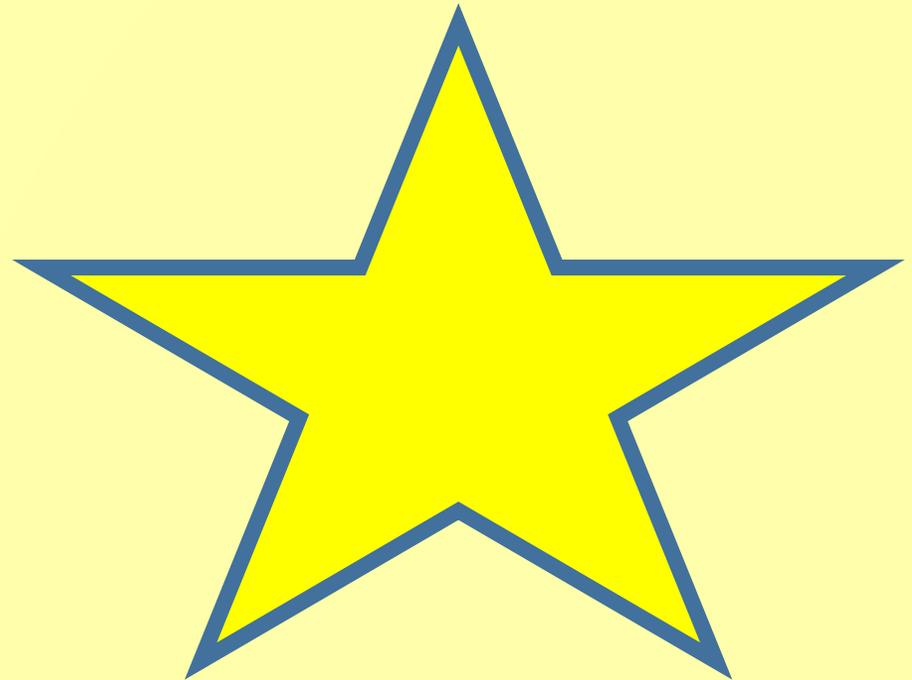
Post-Hearing Actions: 910 IAC 1-11-3

- File a Brief: the parties are entitled to file a brief, but will not be prejudiced if no action is taken
- File a Suggested Order: “A suggested decision shall include suggested findings of fact, conclusions of law, and the final order by the Commission which the party desires...”
- Reopen Hearing upon an order by the Commission



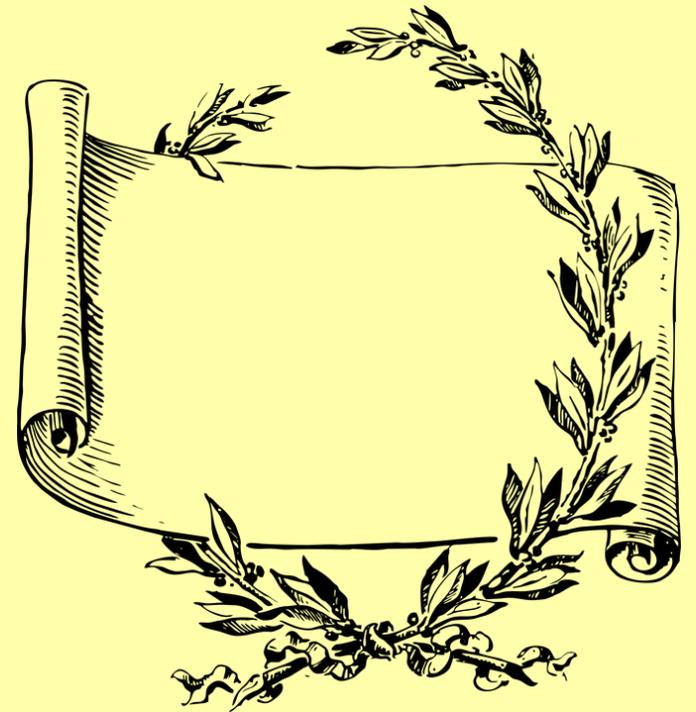
Benefit of the Administrative Forum: Proposed Orders

- The Indiana Administrative Orders and Procedures Act allows the parties to submit proposed orders: this is a chance for further advocating specific relief!



Order

- Administrative Law Judge will issue a Proposed Order
- Parties will have 15 days to file any objections
- The Commission will review the Proposed Order and will accept or modify the Proposed Order
- The Commission will issue a Final Order



Indiana Civil Rights Commission Practice and Procedures Handbook

October-early November 2018

Questions, Comments, Concerns?

